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In re application of Kurple et al.

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AMENDED APPEAL BRIEF UNDER 37 CFR § 41.37

Applicants herein present their Amended Appeal Brief in response to the Notification of Non-Compliant Appeal Brief mailed May 15, 2007, appealing the Final Rejection of Claims 1-6, 10-16, 20-26, 30-34, 36-46, 48, and 49 presented in the Office Action mailed on October 10, 2006.

(1) Real Party In Interest

The real party in interest in this Appeal is Continental Commercial Products, LLC, the assignee of the application as set forth in an Assignment recorded on June 3, 2005, at Reel No. 016647, Frame No. 0296.

(2) Related Appeals and Interferences

There are no related appeals and/or interferences.

(3) Status of Claims

Claims 1-49 are pending in the application.

Claim 29 has been allowed.

Claims 7-9, 17-19, 27, 28, 35, and 47 have been objected to.

Claims 1-6, 10-16, 20-26, 30-34, 36-46, 48, and 49 have been given a final rejection.

The Final Rejection of claims 1-6, 10-16, 20-26, 30-34, 36-46, 48, and 49 is being appealed herein.

(4) Status of Amendments

No amendments have been filed in the application following the Final Rejection mailed on October 10, 2006.

(5) Summary of Claimed Subject Matter

Of the claims given a Final Rejection, claims 1, 10, 20, 30, and 36 are independent claims.

The subject matter of the invention defined by independent claim 1 is a sign 10 that comprises a pair of support panels 12A, 12B (specification page 6, lines 7-9 and 19-22, Figures 1 and 2) each having opposite upper 30 and lower 32 ends (specification page 6, lines 9-10), and each having a first surface 34A and a generally opposite second surface 34B (specification page 6, lines 9-10, Figures 2 and 3). The upper ends 30 of the pair of panels 12A, 12B are connected together by a pivoting connection 16 (specification page 6, lines 15-16, Figures 1, 3 and 4).

The sign 10 also includes a runner 22 positioned adjacent the upper ends 30 of the support panels 12A, 12B and adjacent to the pivoting connection 16 (Specification page 6, lines 16-17 and Figures 1-4). The runner 22 extends from the first surface 34A of a first of the support panels 12A to a second surface 34B of a second support panel 12B (specification page 9, lines 14-15 and Figure 4).

The sign 10 also comprises at least one movable panel 20A that has an upper end 46 and a lower end 47 (specification page 6, lines 12-14 and Figures 2 and 3), and a third surface 36 between the upper and lower ends (specification page 6, lines 10-11). The movable panel upper end 46 engages the runner 22 (specification page 6, lines 16-18) so that the movable panel 20A is movable along the runner 22 between a first position where the movable panel 20A is generally parallel to the first surface 34A of the first support panel 12A, and a second position where the movable panel 20A is generally parallel to the second surface 34B of the second support panel 12B (specification page 6, lines 7-14 and lines 18-22; and Figures 1-4).

The subject matter of the invention defined by independent claim 10 includes a self-standing sign 10 (specification page 5, lines 16-18 and Figure 1) that comprises a first support panel 12A having a proximal end 30, a distal end 32 (specification page 6, lines 9-10), and a first surface 34A between the proximal and distal ends; and a second support panel 12B having a proximal end 30, a distal end 32, and a second surface 34B between the proximal and distal ends (specification page 6, lines 9-10 and Figures 2 and 3). The first 12A and second 12B panels are connected together at their proximal ends 30 by a connection 16 that allows the first 12A and second 12B panels to move relative to each other so that the first surface 34A and the second surface 34B face outwardly (specification page 6, lines 15-16 and Figures 1, 3 and 4). The distal ends 32 of the first panel 12A and second panel 12B are adapted for supporting the sign from a support surface (specification page 10, lines 11-12).

The self-standing sign 10 also includes a runner 22 that is adjacent the proximal ends 30 of the first panel 12A and second panel 12B (specification page 6, lines 16-17, and Figures 1-4)

and extends from the proximal end of the first panel 12A to the proximal end of the second panel 12B. The runner 22 is separate from the connection 16 (specification page 9, lines 14-15, and Figures 1-4).

The self-standing sign also includes at least one movable panel 20A that has a proximal end 46, a distal end 47 (specification page 6, lines 12-14, and Figures 2 and 3), and a third surface 36 between the proximal and distal ends (specification page 6, lines 10-11). The proximal end 46 of the movable panel 20A engages the runner 22 and is movable along the runner 22 between a first position where the movable panel 20A is generally parallel to the first support panel 12A and a second position where the movable panel 20A is generally parallel to the second panel 12B (specification page 6, lines 7-14 and lines 18-22; and Figures 1-4).

The subject matter of the invention defined by independent claim 20 includes a kit 211 (specification page 12, lines 1-3, and Figure 6) for a sign 209 that comprises a pair of support panels 212A, 212B having opposite proximal and distal ends (Figure 6) with each of the support panels having a first surface 234A and a generally opposite second surface 234B (specification page 12, lines 3-5). The proximal ends of the support panels 212A, 212B are connected together by a pivoting connection 1 (Figure 6).

The kit for a sign 209 also includes a runner 222 that is positioned adjacent the proximal ends of the support panels 212A, 212B and to the pivoting connection (specification page 12, lines 6-10 and Figure 6). The runner 22 extends from the first surface 234A to the second surface 234B.

The kit for a sign 209 also includes at least one movable panel 220 that has a proximal end, a distal end, and a third surface (specification page 12, lines 6-10 and Figure 6). The proximal end of the movable panel 220 engages the runner 222 so that the movable panel 220 is movable along the runner 222 between a first position where the movable panel 220 is generally parallel to the first surface 234A and a second position where the movable panel 220 is generally parallel to the second surface 234B (specification page 12, lines 6-10 and Figure 6).

The subject matter of the invention defined by independent claim 30 is a method of changing a message displayed by a sign 10 that comprises placing the sign 10 in a location for viewing, with the sign including a pair of support panels 12A, 12B that are connected by a pivoting connection 16 (specification page 6, lines 7-9, 16-17, 19-22 and page 10, lines 7-12, and Figures 1-4). Each of the support panels 12A, 12B has a first surface 34A and a generally opposite second surface 34B (specification page 6, lines 9-10, Figures 2 and 3). The sign also includes at least one movable panel 20A having a proximal end 46, a distal end 47 (specification page 6, lines 12-14 and Figures 2 and 3), and a third surface 36 between the proximal and distal ends (specification page 6, lines 10-11). The movable panel 20A is connected to the support panels 12A, 12B by a circular runner 22 (specification page 6, lines 7-14 and lines 18-22 and Figures 1-4). One of the movable panel surfaces 36 is selected for display. The movable panel 20A is moved along the runner 22 to display the selected surface 36 by moving the movable panel 20A from a first position where the movable panel 20A is generally parallel to the first surface 34A of the support panels 12A, 12B, to a second position where the movable panel 20A is generally parallel to the second surface 34B of the support panels 12A, 12B (specification page 6, lines 7-14 and lines 18-22; specification page 7, lines 9-17; specification page 10, lines 12-15, and Figures 1-4).

The subject matter of the invention defined by independent claim 36 is a self-standing floor sign 10 (specification page 5, lines 16-18 and Figure 1) that comprises first 12A and second 12B support panels (specification page 6, lines 7-9 and 19-22 and Figures 1 and 2), with each support panel having a proximal end 30 and a distal end 32 (specification page 6, lines 9-10). The support panels 12A, 12B are pivotally connected at their proximal ends 30 by a pivot connection 16 (specification page 6, lines 15-16, and Figures 1, 3 and 4). The pivot connection 16 allows pivotal movement of the support panels 12A, 12B relative to each other between a closed position where the panels are in generally parallel relation, and an open position where the distal ends 32 of the panels 12A, 12B are spaced apart to allow support of the floor sign 10

in a generally upright position with the spaced apart distal ends 32 resting on a floor (specification page 10, lines 8-12).

The self-standing floor sign 10 also includes a runner 22 connected to the support panels 12A, 12B (specification page 6, lines 16-17 and page 9, lines 14-15, and Figures 1-4), and a plurality of movable panels 20A, 20B, 20C. Each of the movable panels has a proximal end 46 and a distal end 47 with a portion therebetween having first 36, 38, 40 and second 36', 38', 40' surfaces (specification page 6, lines 10-13). Each of the movable panels 20A, 20B, 20C is mounted on the runner 22 (specification page 6, lines 16-18) and is rotatable between a first position where each movable panel is supported by one of the support panels 12A with one of the surfaces 36, 38, 40 being visible, and a second position where the movable panel is supported by the other of the support panels 12B and its opposite surfaces 36', 38', 40' being visible (specification page 6, line 18 to page 7, line 1).

(6) Grounds of Rejection to be Reviewed on Appeal

The grounds of rejection to be reviewed on appeal is the Final Rejection of claims 1-6, 10-16, 20-26, 30-34, 36-46, 48, and 49 under 35 U.S.C. § 102(b) as being anticipated by the disclosure of the U.S. Patent of Ericson No. 2,208,213.

(7) Argument

Claim Rejections – 35 U.S.C. § 102

Claims 1-6, 10-16, 20-26, 30-34, 36-46, 48, and 49 were rejected under 35 U.S.C. § 102(b) as being anticipated by the disclosure of the U.S. Patent of Ericson No. 2,208,213. Of these rejected claims, claims 1, 10, 20, 30, and 36 are independent claims. Each of these independent claims recites subject matter of the invention that is not identically disclosed by the Ericson reference. It is therefore submitted that the independent claims 1, 10, 20, 30, and 36 are allowable over the Ericson reference, and that their dependent claims are allowable over the Ericson reference.

It is a fundamental tenant of patent law that for a prior art reference to anticipate claimed subject matter, the reference must identically show every element of the claimed subject matter.

For a prior-art reference to anticipate, every element of the claimed invention must be identically shown in a single reference.

In Re Bond, 910 F.2d 831, 15 U.S.P.Q.2d 1566 (Fed. Cir. 1990).

[A]ny degree of physical difference, however slight, invalidates the claims of anticipation.

Ultradent Products, Inc. v. Life-Like Cosmetics, Inc., 39 U.S.P.Q.2d 1969, 1980 (Utah 1996).

Each of the independent claims of the application includes a common novel feature of the invention that is not identically shown by the Ericson reference. Because this feature that is common to all of the independent claims is not identically shown by the Ericson reference, this degree of physical difference is sufficient to invalidate the anticipation rejection under the above-cited case law.

Independent claim 1, among other features of the invention, requires that a movable panel be "movable along the runner between a first position wherein the movable panel is generally parallel to the first surface of the first support panel and a second position wherein the movable panel is generally parallel to the second surface of the second support panel."

In the rejection of the claims, the display binder of the Ericson reference is interpreted to have support panels 7, 8, a runner 34, and a movable panel 4. The rejection also contends that the "movable panels are movable along the runner (Figure 4) from parallel to the first support panel to parallel to the second support panel." However, as shown in Figure 4, in one position of the movable panel 4 where the movable panel 4 is at the top of the binder, the movable panel 4 is generally parallel with one support panel 7, but in the second position of the movable panel 4 where the movable panel 4 is at the bottom of the binder shown in Figure 4, the movable panel 4 is not generally parallel with the second support panel 8. Therefore, the Ericson reference does not identically show the features of claim 1 described above, and the physical differences between the Ericson binder and the construction of the sign recited in Claim 1 are

sufficient to invalidate the anticipation rejection of claim 1. Claim 1 and its dependent claims 2-9 are therefore allowable over the Ericson reference. The rejection of the claims should be reversed and the claims allowed.

In a similar manner, independent claim 10 recites at least one movable panel that is "movable along the runner between a first position wherein the movable panel is generally parallel to the first panel and a second position wherein the movable panel is generally parallel to the second panel." As explained above with regard to claim 1, this feature of the invention is not identically shown by the Ericson reference. This physical difference invalidates the anticipation rejection of claim 10 in view of the Ericson reference, and claim 10 and its dependent claims 11-19 are allowable over the prior art.

In a similar manner, independent claim 20 recites a movable panel that is "movable along the runner between a first position wherein the movable panel is to be generally parallel to the first surface and a second position wherein the movable panel is to be generally parallel to a second surface." As explained above with regard to claim 1, the Ericson reference does not identically show this feature of the invention. This physical difference invalidates the anticipation rejection of claim 20 in view of the Ericson reference, and claim 20 and its dependent claims 21-28 are allowable over the prior art. The rejection of the claims should be reversed and the claims allowed.

In a similar manner, independent claim 30 recites "moving the at least one movable panels along the runner to display the selected surface, the moving being from a first position wherein the at least one moveable panel is generally parallel to the first surface to a second position wherein the at least one moveable panel is generally parallel to the second surface." As explained above with regard to claim 1, this feature of the invention is not identically shown by the Ericson reference. This physical difference invalidates the anticipation rejection of claim 30 in view of the Ericson reference, and claim 30 and its dependent claims 31-35 are allowable over the prior art. The rejection of the claims should be reversed and the claims allowed.

In a similar manner, independent claim 36 recites each movable panel that is "rotatable between a first position wherein said movable panel is supported by one of said support panel, with one of its surfaces being visible, and a second position wherein said movable panel is supported by the other of said support panels and its other surface is visible." In viewing Figure 4 of the Ericson reference, it can be seen that the movable panel 4 can be moved to a position where it is supported by one of the support panels 7, but when moved to its other position, it is not supported by the other support panel 8. Thus, the Ericson reference fails to identically show every feature of the invention recited in claim 36. This physical difference between the subject matter of claim 36 and the disclosure of the Ericson reference invalidates the anticipation rejection of claim 36, and claim 36 and its dependent claims 37-49 are allowable over the prior art. The rejection of the claims should be reversed and the claims allowed.

(8) Claims Appendix

1. A sign comprising:

a pair of support panels each having opposite upper and lower ends and each having a first surface and a generally opposite second surface, the upper ends of the pair of panels being connected together by a pivoting connection;

a runner adjacent to the upper ends of the support panels and adjacent to the pivoting connection, the runner extending generally from the first surface of a first support panel of the pair to the second surface of a second support panel of the pair ; and

at least one movable panel having an upper end, a lower end, and a third surface between the upper and lower ends, the upper end of the movable panel engaging the runner in a manner so that the movable panel is movable along the runner between a first position wherein the movable panel is generally parallel to the first surface of the first support panel and a second position wherein the movable panel is generally parallel to the second surface of the second support panel.

2. The sign according to Claim 1, further comprising:
a first and a second movable panel of the at least one movable panel, the first and second movable panels each having opposite surfaces for displaying a message.
3. The sign according to Claim 1, wherein the runner and the upper ends of the support panels are coupled.
4. The sign according to Claim 1, further comprising:
the runner being circular.
5. The sign according to Claim 1, wherein:
the runner is flexible.
6. The sign according to Claim 1, further comprising:
an eyelet at the upper end of the at least one movable panel, the movable panel engaging the runner by the runner extending through the eyelet.
10. A self-standing sign comprising:
a first support panel having a proximal end, a distal end, and a first surface between its proximal and distal ends;
a second support panel having a proximal end, a distal end, and a second surface between its proximal and distal ends, the first and second panels being connected to one another at their proximal ends by a connection that allows the first and second support panels to move relative to each other and in a manner so that the first and second surfaces face outwardly, the distal ends of the first and second panels being adapted for supporting the sign from a support surface;

a runner adjacent the proximal ends of the first and second panels and extending generally from the proximal end of the first panel to the proximal end of the second panel, the runner being separate from the connection ; and

at least one movable panel having a proximal end, a distal end, and a third surface between its proximal and distal ends, the proximal end of the movable panel engaging the runner in a manner so that the movable panel is movable along the runner between a first position wherein the movable panel is generally parallel to the first panel and a second position wherein the movable panel is generally parallel to the second panel.

11. The sign according to Claim 10, further comprising:

a first and a second movable panel of the at least one movable panel, the surfaces of the first and second movable panels for displaying the same message.

12. The sign according to Claim 10, further comprising:

a fourth surface on the side of the movable panel opposite the third surface.

13. The sign according to Claim 10, wherein:

the runner and the proximal ends of the first and second support panels are coupled.

14. The sign according to Claim 10, further comprising:

an extension of the at least one movable panel extending from the proximal end of the movable panel, the runner being circular.

15. The sign according to Claim 10, wherein:

the runner is flexible.

16. The sign according to Claim 10, further comprising:
an eyelet at the proximal end of the at least one movable panel, the movable panel engaging the runner via the eyelet.

20. A kit for a sign comprising:
a pair of support panels each having opposite proximal and distal ends and each having a first surface, and a generally opposite second surface, the proximal ends of the support panels being connected together by a pivoting connection;
a runner positioned adjacent to the proximal ends of the support panels and to the pivoting connection, the runner extending from the first surface to the second surface; and
at least one movable panel having a proximal end, a distal end, and a third surface between its proximal and distal ends, the proximal end of the movable panel engaging the runner in a manner so that the movable panel is movable along the runner between a first position wherein the movable panel is to be generally parallel to the first surface and a second position wherein the movable panel is to be generally parallel to the second surface.

21. The kit according to Claim 20, further comprising:
a first and a second movable panel of the at least one movable panel, with surfaces of the first and second movable panels for displaying a same message.

22. The kit according to Claim 20, wherein:
the runner is adapted to be coupled to the proximal ends of the support panels.

23. The kit according to Claim 20, further comprising:

an extension of the at least one movable panel extending from the proximal end of the movable panel, and the runner being circular.

24. The kit according to Claim 20, wherein:

the runner is flexible.

25. The kit according to Claim 20, further comprising:

an eyelet at the proximal end of the at least one movable panel, the movable panel engaging the runner via the eyelet.

26. The kit according to Claim 20, further comprising:

an aperture in the proximal end of the at least one movable panel, the runner extending through the aperture.

30. A method of changing a message displayed by a sign, comprising:

placing the sign in a location for viewing, the sign including a pair of support panels connected by a pivoting connection, each panel having a first surface and a generally opposite second surface and at least one movable panel having a proximal end, a distal end, and a third surface between its proximal and distal ends;

connecting the movable panel to the support panels by a circular runner;

selecting at least one of the surfaces for display; and

moving the at least one movable panels along the runner to display the selected surface, the moving being from a first position wherein the at least one movable panel is generally parallel to the first surface to a second position wherein the at least one movable panel is generally parallel to the second surface.

31. The method of Claim 30, further comprising:
using a flexible runner.
32. The method of Claim 30, further comprising:
using a ring for the runner.
33. The method according to Claim 30, further comprising:
displaying a same message on at least two of the surfaces.
34. The method according to Claim 30, further comprising:
coupling the runner to the pair of support panels.

36. A self-standing floor sign comprising:

first and second support panels, each having a proximal end and a distal end, said panels being pivotally connected at their proximal ends by a pivot connection to allow pivotal movement of said panels relative to each other between a closed position wherein the panels are in generally parallel relation and an open position wherein the distal ends of said panels are spaced apart to allow support of the floor sign in a generally upright position with the spaced apart distal ends resting on a floor;

a runner connected to the support panels; and

a plurality of movable panels, each having a proximal end and a distal end and a portion therebetween having first and second surfaces, each movable panel being mounted on the runner and being rotatable between a first position wherein said movable panel is supported by one of said support panels with one of its surfaces being visible, and a second position wherein said movable panel is supported by the other of said support panels and its other surface is visible.

37. A self-standing floor sign of Claim 36 wherein:
at least one of said first and second support panels has an outwardly facing display portion.
38. A self-standing floor sign of Claim 36 wherein:
both of said first and second support panels have outwardly facing display portions.
39. A self-standing floor sign of claim 38 wherein:
each of said movable panels has a display on both of its surfaces.
40. A self-standing floor sign of Claim 36 wherein:
each of said movable panels has a display on at least one of its surfaces.
41. A self-standing floor sign of claim 40 wherein:
a display on a surface of one of the movable panels is the same as a display on a surface of another of the movable panels, said displays both being visible with one of the movable panels rotated to said first position and another of said movable panels rotated to said second position.
42. A self-standing floor sign of Claim 41 wherein:
at least one of said first and second support panels has an outwardly facing display portion.
43. A self-standing floor sign of Claim 41 wherein:

both of said first and second support panels have outwardly facing display portions.

44. A self-standing floor sign of Claim 40 wherein:

said first support panel has an outwardly facing display portion and a display on a surface of one of the movable panels is the same as a display on a surface of the first support panel, said displays both being visible with said one of the movable panels rotated to said first position wherein said one of the movable panels is supported by the second support panel.

45. A self-standing floor sign of claim 36 wherein:

each of said movable panels has a display on both of its surfaces.

46. The self-standing floor sign of claim 36, wherein:

at least one of said first and second support panels has an outwardly facing display portion and wherein at least one of the display portions of the support panels and a display on a surface of one of the movable panels is blank.

48. The self-standing floor sign of claim 36, wherein:

at least one of said first and second support panels has an outwardly facing display portion that is blank.

49. The self-standing floor sign of claim 36, wherein:

at least one of said first and second support panels has an outwardly facing display portion that displays a message in a plurality of languages.

(9) Evidence Appendix

None.

(10) Related Proceedings Appendix

None.

An oral proceeding is not requested.

In view of the remarks presented above, it is respectfully submitted that the Final Rejection of the claims should be reversed and the claims allowed.

Respectfully submitted,

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